

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANA RUTH LIXENBERG,

Plaintiff,

v.

COMPLEX MEDIA, INC. AND DOES 1-10,

Defendants.

No. 22-CV-354 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On November 28, 2023, the Court stayed Defendant Complex Media Inc.’s motion to dismiss Plaintiff’s Second Amended Complaint pending the resolution of *Michael Grecco Productions, Inc. v. RADesign, Inc.*, No. 21-cv-8381, 2023 WL 4106162 (S.D.N.Y. June 20, 2023), which had been on appeal in the Second Circuit. *See* ECF No. 47. As the parties are likely aware, on August 16, 2024, the Second Circuit issued a decision, and has now held that “[t]here is no ‘sophisticated plaintiff’ exception to the discovery rule, or to a defendant’s burden to plead and prove a statute-of-limitations defense.” *Michael Grecco Prods., Inc. v. RADesign, Inc.*, No. 23-1078, 2024 WL 3836578, at *1 (2d Cir. Aug. 16, 2024).

In light of the fact that Defendant’s motion to dismiss was based, in good part, on the theories that Plaintiff was a seasoned litigator who should have known about the alleged breach of copyright and that, in any event, the discovery rule does not apply in copyright cases absent fraud, the Court denies the pending motion to dismiss, with leave to amend.


No later than August 30, 2024, the parties shall jointly file a letter updating the Court as to the next steps in this litigation, including whether Defendant will again move to dismiss Plaintiff’s Second Amended Complaint. If so, the parties shall include a proposed briefing schedule in their

joint letter.

The Clerk of Court is respectfully directed to lift the stay on this action and to close the motion pending at ECF. No. 38.

SO ORDERED.

Dated: August 19, 2024
New York, New York



Ronnie Abrams
United States District Judge